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tempted to move a heavy object which injured him and caused paralysis, and the court held that the injury was the result of an "accident". *Manning* v. *Pomerene*, 101 Neb. 127, 162 N. W. 492 (1917). See also *Uhl* v. *Guarantee Construction Co.*, 161 N. Y. S. 659, 174 App. Div. 571 (1916). Paralysis resulting from the rupture of a small blood vessel from unusual heat and overexertion by an employee, who had had arterial sclerosis for two years, was an "accident" within the meaning of the Workmen's Compensation Act. *La Veck* v. *Parke, Davis & Co.*, 190 Mich. 604, 157 N. W. 72 (1916). It is an "accident" where heart failure results from excitement and overexertion causing death, although the deceased had been afflicted with heart disease for some time. *Schroetke* v. *Jackson-Church Co.*, 193 Mich. 616, 160 N. W. 383 (1916). So also where a night watchman was injured from an assault by intruders when he attempted to protect his employer's property. *Hellman* v. *Manning Sand Paper Co.*, 162 N. Y. S. 335, 176 App. Div. 127 (1916).

A laborer, while working during exceedingly hot weather due to heat of the sun and heat from wet streets, suffered a sunstroke which resulted in death. Such death was "accidental". *State* v. *District Court*, 138 Minn. 250, 164 N. W. 916 (1917). So also where death is due to a heat stroke. *Kanscheit* v. *Garrett Laundry Co.*, 101 Neb. 702, 164 N. W. 708 (1917); *Lane* v. *Horn & Hardart Baking Co.* (Penn.), 104 Atl. 615 (1918); *Walsh* v. *River Spinning Co.* (R. I.), 103 Atl. 1025 (1918). An injury to a servant is "accidental" which resulted from frostbites while he was exposed to the weather in carrying coal. *Days* v. *S. Trimmer & Sons*, 162 N. Y. S. 603, 176 App. Div. 124 (1916). So also where an employee was shoveling snow. *State* v. *District Court*, 138 Minn. 260, 164 N. W. 917 (1917). An employee, whose hands were frozen while cutting and handling timber in a forest, was injured by an "accident". *State* v. *District Court*, 138 Minn. 131, 164 N. W. 585 (1917).

Being overcome by noxious gases while working in a mine is an "accident" within the Workmen's Compensation Law. *Tarr* v. *Hecla Coal & Coke Co.* (Pa.), 109 Atl. 224 (1920); *Gurski* v. *Susquehanna Coal Co.*, 262 Pa. 1, 104 Atl. 801 (1918). See also *Utilities Coal Co.* v. *Herr et al.* (Ind.), 132 N. E. 262 (1921), 8 VA. LAW REV. 306.

Where a fireman died from pneumonia resulting from being thoroughly drenched while fighting a fire, death was not caused by an accident but was an incident to his regular employment. *Landers* v. *City of Muskegon*, 196 Mich. 750, 163 N. W. 43, L. R. A. 1918A, 218 (1917). Although this decision seems wholly in accord with the Michigan decisions upon this point; yet upon reason and principle, as well as the majority holding of the other States, it seems to be a questionable holding.

MASTER AND SERVANT—INJURIES TO THIRD PERSONS—EMPLOYEE SERVANT OR INDEPENDENT CONTRACTOR.—The defendant, a retail coal dealer, in order to effect deliveries to customers, employed among others one McCann, who owned and operated a truck in his business of delivering commodities. McCann was paid an agreed amount per ton and was as-

sisted by the defendant's regular employees in loading at the yards and unloading at the place of delivery when necessary. While making a delivery, he negligently ran into the plaintiff's minor son. The plaintiff brought an action against the defendant to recover for injuries to his son. *Held*, plaintiff could recover. *Dunn* v. *Reeves Coal Yards Co.* (Minn.), 184 N. W. 1027 (1921).

An independent contractor is one who, carrying on an independent business, contracts to do a piece of work according to his own methods, and without being subject to the control of his employer as to the means by which the result is to be accomplished, but only as to the result of the work. *Indiana Iron Co.* v. *Cray*, 19 Ind. App. 565, 48 N. E. 803 (1897); *Norfolk, etc., R. Co.* v. *Stevens*, 97 Va. 631, 34 S. E. 525, 46 L. R. A. 367 (1899). The word "result", as so used, means a production or product of some sort and not a service; hence, the plowing of a field, the driving of a carriage, or a horse car, are not results but services. *Jensen* v. *Barbour*, 15 Mont. 582, 39 Pac. 906 (1895).

It is a fundamental principle that for the acts of the agent or servant within the scope of his employment, the employer is in general liable. For the acts of the independent contractor, in general he is not, since it would be unjust to impose liability for another's wrong where there has been no control over the actions of the wrongdoer. *Atlanta and F. R. Co.* v. *Kimberley*, 87 Ga. 101, 13 S. E. 277, 27 Am. St. Rep. 231 (1891); *Kelleher* v. *Schmitt and Henry Mfg. Co.*, 122 Iowa 635, 98 N. W. 482 (1904).

In the case of ordinary mechanics, performing simple work, it is often very difficult to decide whether they are to be regarded as independent contractors or mere servants. Where a licensed expressman undertook to deliver defendant's goods at so much a week, being at liberty to do it in person or through a servant, and furnishing his own team and wagon, it was held that he was an independent contractor and not a servant, although he had defendant's sign furnished by defendant on the wagon. *Burns* v. *Michigan Paint Co.*, 152 Mich. 613, 116 N. W. 182, 16 L. R. A. (N. S.) 816 (1908). In another case a verdict was given against the employer under almost identical facts, except that there was, however, a somewhat larger measure of control. *Glover* v. *Richardson*, 64 Wash. 403, 116 Pac. 861 (1911). Indeed, the right to control is the test of the relationship. *Whitson* v. *Ames*, 68 Minn. 23, 70 N. W. 793 (1897); *Vosbeck* v. *Kellogg*, 78 Minn. 176, 80 N. W. 957 (1899). Whether the employer does actually exercise control over the work is not a material element in determining whether the employee is an independent contractor, the right to control being the important factor. *Atlantic Transport Co.* v. *Coneys*, 82 Fed. 177 (1897).

Generally the circumstances which go to show one to be an independent contractor, while separately they may not be conclusive, are the independent nature of his business, the existence of a contract for the performance of a specified piece of work, the agreement to pay a fixed price for the work, the employment of assistants by the employee who are under his control, the furnishing by him of the necessary materials,

and his right to control the work while it is in progress except as to results. See 26 CYC. 1547. The mere fact, however, that the employee is one who carries on a separate and independent employment does not make him an independent contractor. *Brackett* v. *Lubke*, 4 Allen (Mass.), 138, 81 Am. Dec. 694 (1862).

The fact that the employee furnishes the tools or materials affords but little light on his independence, but such fact has in some cases been considered as tending to show independence. *Harris* v. *McNamara*, 97 Ala. 181, 12 So. 103 (1892). It is well settled, however, that an employee may be a mere servant though he himself furnishes the materials or tools. *Tiffin* v. *McCormack*, 34 Ohio St. 638, 32 Am. Rep. 408 (1878). Conversely, an employee may be independent though the materials are furnished by the employer. *Emmerson* v. *Fay*, 94 Va. 60, 26 S. E. 386 (1896). The fact that the employee is paid by the "job" or "piece" for his work tends to show that he is independent. *Giacomini* v. *Pacific Lumber Co.*, 5 Cal. App. 218, 89 Pac. 1059 (1907). But he may be merely a servant though he is paid by the "job" or "piece". *Tiffin* v. *McCormack, supra; Isnard* v. *Edgar Zinc. Co.*, 81 Kan. 765, 106 Pac. 1003 (1910). And an employee may be independent though he is to be paid the amount the work and materials cost him, with a percentage added for his services. *Whitney, etc., Co.* v. *O'Rourke*, 172 Ill. 177, 50 N. E. 242 (1898).

The decision in the instant case is based largely on *Waters* v. *Pioneer Fuel Co.*, 52 Minn. 474, 55 N. W. 52, 38 Am. St. Rep. 564 (1893), in which it was held that a teamster hired to haul coal in his own wagon for a fuel company occupies the position of a servant, when he represents the company in all the details of the work assigned to him, and is subject to its control as long as his employment continues. Under such circumstances it is immaterial that he is paid for his work by the load and not by the day or hour. The instant case certainly seems sound. For an illuminating note on the subject see 19 Ann. Cas. 3.

RAILROADS—THE FACT THAT ONLY AN EASEMENT OR TERMINABLE FEE MAY BE ACQUIRED BY THE EXERCISE OF EMINENT DOMAIN DOES NOT PRECLUDE A RAILROAD COMPANY FROM PURCHASING A RIGHT OF WAY.—A railroad corporation was authorized by statute and by its charter to purchase such real estate as its purposes might require. The corporation negotiated with the plaintiff for the purchase of a strip of land to be used as a right of way, and after threatening plaintiff with condemnation proceedings, plaintiff agreed to sell. The deed was in the form of a general warranty deed, reciting that "all the estate, right, title, interest," in "a strip of land" was conveyed to the grantee railway company, "its successors and assigns forever." The railroad company ceased to use the land as a right of way, and conveyed it to defendant. Plaintiff brought an action of ejectment to recover the land, admitting the execution and delivery of the deed, but claiming that the land was conveyed for railroad purposes only, and having ceased to be used for such purposes, all the estate in the land had reverted to them. *Held*, judgment for defendant. *Radetsky* v. *Jorgensen* (Colo.), 202 Pac. 175 (1921).